

**STATE WATER RESOURCES CONTROL BOARD
BOARD MEETING SESSION – ADMINISTRATIVE HEARINGS OFFICE
NOVEMBER 17, 2020**

ITEM 2

SUBJECT

CONSIDERATION OF A PROPOSED ORDER IMPOSING ADMINISTRATIVE CIVIL LIABILITY ON PIMENTEL FAMILY RLT FOR FAILURE TO TIMELY FILE SUPPLEMENTAL STATEMENT OF WATER DIVERSION AND USE FOR 2018 DIVERSIONS AND USE UNDER S023607, S023608 AND S023610

DISCUSSION

On October 18, 2019, an Assistant Deputy Director of the Board's Division of Water Rights (Division) issued an Administrative Civil Liability Complaint (ACL Complaint) to Pimentel Family RLT (Respondent), holder of water rights claims in Statements S023607, S023608 and S023610, based on Respondent's failure to timely file its annual supplemental statements of water diversion and use for its 2018 diversions and use. The ACL Complaint stated that the total maximum potential liability for Respondent's failure to file its supplemental statements of water diversion and use for 2018 was \$162,000, based on an alleged violation for 108 days and the maximum penalty of \$500 per day per statement under Water Code section 1846. The ACL Complaint recommended the imposition of \$6,000 in administrative civil liability.

The ACL Complaint contained an "EXPEDITED SETTLEMENT OFFER" that, if accepted by Respondent, would reduce the administrative civil liability to \$1,500 in return for Respondent's waiver of its right to a hearing and Respondent's filing of the supplemental statements for 2018 within 30 days.

Respondent did not accept the Division's settlement offer and requested a hearing. Respondent filed its supplemental statements for 2018 on October 28, 2019.

The Administrative Hearings Office (AHO) held a hearing on the ACL Complaint on July 8, 2020. On October 1, 2020, the AHO transmitted its proposed order to the Clerk of the Board.

The AHO's proposed order discusses the relevant facts and the statutory factors the Board is to consider when deciding the appropriate amount of administrative civil liability. Considering these factors, the proposed order concludes that \$1,500 is the appropriate administrative civil liability amount. While Respondent did not accept the Division's settlement offer, Respondent complied with the part of the settlement offer that required Respondent to file its supplemental statements for 2018 within 20 days of Respondent's receipt of the ACL Complaint, and Respondent did not take any actions that would justify a higher civil liability amount. During the hearing, Respondent's

representative acknowledged the importance of filing Respondent's future supplemental statements on time, and she filed Respondent's supplemental statements for 2019 before the applicable deadline. The \$1,500 administrative civil liability amount is consistent with the testimony of the Division's witness that this amount is "low enough to encourage voluntary corrective action, but still high enough to encourage voluntary compliance in the future."

POLICY ISSUE

Should the State Water Board adopt the proposed order?

FISCAL IMPACT

The activity is budgeted within existing resources and no additional fiscal demands will result from approval of the proposed order.

REGIONAL BOARD IMPACT

None.

STAFF RECOMMENDATION

The AHO recommends that the State Water Board adopt the proposed order.